

OFFICE OF THE SECRETARY OF STATE  
OLYMPIA, WASHINGTON

REQUEST FOR QUALIFICATIONS AND QUOTATIONS  
RFQQ NO. 06-02

PROJECT TITLE: Voter Registration Database (VRDB) Phase II

PROPOSAL DUE DATE: November 22, 2005

EXPECTED TIME PERIOD FOR CONTRACT: January 3, 2006 – June 30, 2007  
(approximately 18 months)

CONSULTANT ELIGIBILITY: To be eligible, bidders must be or become licensed to do business in the State of Washington, comply with the specifications of this RFQQ, and must be willing and able to sign a contract with the State of Washington which includes standard requirements stated in this RFQQ.

CONTENTS OF THE REQUEST FOR QUALIFICATIONS AND QUOTATIONS

1. Introduction
2. General Information for Consultants
3. Proposal Contents
4. Evaluation and Award
5. Attachments
  - A. Certifications and Assurances
  - B. Sample Personal Service Contract
  - C. Project Estimated Effort Matrix
  - D. Project Organizational Chart

## TABLE OF CONTENTS

1.	Introduction .....	4
1.1	Purpose and Background .....	4
1.2	Deliverables and Objectives .....	5
1.3	Minimum Qualifications .....	6
1.4	Funding .....	6
1.5	Period of Performance .....	6
1.6	Definitions .....	6
1.7	ADA .....	7
2.	General Information for Consultants .....	7
2.1	RFQQ Coordinator .....	7
2.2	Estimated Schedule of Procurement Activities .....	7
2.3	Information Will Be Posted On the Web .....	7
2.4	Questions and Answers .....	8
2.5	Submission of Proposals .....	8
2.6	Proprietary Information/Public Disclosure .....	8
2.7	Revisions to the RFQQ .....	9
2.8	Minority & Women-Owned Business Participation .....	9
2.9	Acceptance Period .....	9
2.10	Responsiveness .....	10
2.11	Most Favorable Terms .....	10
2.12	Contract .....	10
2.13	Costs to Propose .....	10
2.14	No Obligation to Contract .....	10
2.15	Rejection of Proposals .....	11
2.16	Commitment of Funds .....	11
2.17	Insurance Coverage .....	11
3.	Proposal Contents .....	11
3.1	Letter of Submittal (Mandatory) .....	11
3.2	Qualifications Section .....	11
3.2.1	Business Information .....	11
3.2.2	Qualifications .....	12
3.3	Quotations Section .....	13
3.3.1	Identification of Costs .....	13
3.4	Project Estimated Effort Matrix .....	14
4.	Evaluation and Contract Award .....	14
4.1	Evaluation Procedure .....	14
4.2	Evaluation Weighting and Scoring .....	14
4.3	Oral Interviews Will Be Required .....	15
4.4	Notification to Consultants .....	15
4.5	Debriefing of Unsuccessful Consultants .....	15
4.6	Protest Procedure .....	16
5.	RFQQ Attachments .....	17
	Attachment A: Certifications and Assurances .....	18
	Attachment B: Sample Personal Service Contract .....	19
	Attachment C: Project Estimated Effort Matrix .....	

Attachment D: Project Organization Chart .....

## 1. INTRODUCTION

### 1.1. PURPOSE AND BACKGROUND

#### Purpose

The Office of the Secretary of State (OSOS), hereafter called "Agency," is initiating this Request for Qualifications and Quotations (RFQQ). Proposals are being solicited from consultants interested in working as part of the Agency's Voter Registration Database technical team. Consultants will provide hands-on systems design and programming support that will enable the Agency to exchange data with all 39 counties in the State of Washington, and to provide information to voters via Agency and county Web sites. The Agency's Voter Registration Database technical team will provide the core group of programmers, and the selected Consultant will provide expert programming advice and up to three additional programmers on an as-needed basis.

*NOTE: The Agency is not soliciting for an existing system, product or total vendor solution.*

#### Background

The Help America Vote Act of 2002, 42 USC 15301 to 15545), hereafter called "HAVA," required all states with voter registration to develop or procure a statewide voter registration database. The State then becomes responsible for identifying and resolving duplicate registrations, removing deceased or ineligible registrations, and maintaining the official list of registered voters that county election officials will use to prepare absentee ballot mailings and poll books for each election.

The HAVA voter registration database requirements have also been adopted as state law (RCW 29A.08.105-107) so that all elections will be conducted according to the same standards.

Phase I of this project developed a database that will meet the minimal HAVA requirement by the federal deadline of January 1, 2006. Phase I also implemented a platform for exchanging data with the county election management systems incorporating Web services, standardized XML data packets, and the state's InterGovernmental Network (IGN). Phase I also implemented a platform for exchanging data between the Agency and other state agencies. The technologies employed in Phase I will be employed in Phase II (as outlined in this RFQQ) and are specified elsewhere in this RFQQ.

Phase II of this project is designed to enhance the database to allow the collection and dissemination of data between the 39 counties, the Agency and other state agencies. The information gathered will be available to local election officials, media, candidates, and the public via web pages hosted by the counties and/or the Agency.

*Note: The automatic generation of web content to serve voters in all 39 counties and statewide is a major focus of Phase II, and requires extensive programming of back-end database applications, XML, and web services to provide such content using the specified technologies employed in Phase I. A small amount of work involves static HTML pages.*

Phase II is being guided by a Stakeholder Steering Committee comprised of county and Agency election officials and their technical staff. The Steering Committee has adopted the following guiding principles for Phase II:

- Every county should have a minimal web presence to serve their voters that requires minimal maintenance, minimal technical expertise, and can be maintained at minimal cost;
- Each county may choose to opt in or opt out of Phase II;

- Each county choosing to opt into Phase II may pick and choose those features it wishes to deploy on its web site;
- The initial development of Phase II is being funded by federal HAVA funds, with the expectation that the resulting statewide election information system will be maintained in the future by the state with state funds (subject to legislative and gubernatorial approval);
- While Phase II is a statewide election information system, all web content displayed on a county web site should reflect the design, look and feel of that county web site; and
- Phase II development priorities will be set by the Steering Committee, and communicated to the Consultant by the Agency's Phase II Project Manager.

## 1.2 *DELIVERABLES AND OBJECTIVES*

The objective of this project is to gather and make available information from three areas: election specific, voter registration, and general information. It will entail gathering information from multiple vendors' election management systems, as well as other vendors' ballot tabulation systems. The additional information from all of these vendors is currently not available in a standardized format and a "translator" might need to be developed to accept information from all systems employed in the 39 counties.

When the information is received from all counties, it will be processed at the state level and made available to county web sites, as well as the state web site, where it can be accessed by anyone in a secure environment. The information made available should be searchable and available in standard formats for research purposes.

The deliverables for the Contractor will include the following:

1. Provide staff members to work as part of the Agency Voter Registration Database Phase II technical team, under the direction of the Agency Project Manager. The Contractor's staff will provide systems design and programming services, and serve as the senior technical lead(s).
2. Work with the major providers of election management systems, and possibly other vendors of voting systems used by the counties in Washington state, which are:
  - a. Diebold (DIMS)
  - b. VOTEC Corporation Election Management and Compliance System
  - c. Election Systems & Software (ES&S)
  - d. DFM Associates Election Information Management System
  - e. Additional vendors as needed.

In cooperation with the vendors and the Project Manager, develop the Agency side of the technical interfaces between the county EMS systems, as well as the ballot tabulation systems, and state database to allow for:

- gathering detailed project requirements
- database design
- development of a standardized schema for exchanging election result data
- requirements documentation for the vendors
- input of data both electronically and manually
- output of data in specific formats (see attached list, Attachment C)
- communication protocols to ensure data between county and state systems is reliably exchanged
- additional functionality as needed

3. Provide a skillset of system design and programming support, including BizTalk 2004 that conforms to Agency standards including:
  - a. Microsoft SQL Server 2000
  - b. Microsoft Windows 2003 environment
  - c. XML 1.0
  - d. Microsoft .NET framework
4. Be available to work on site in Olympia, WA as follows:
  - a. Work on site a minimum of three days each week (other times, the work can be done from a remote location) to include participation in internal agency work meetings to monitor project progress against established milestones.
  - b. Participate in VRDB meetings that will occur approximately every 6-8 weeks and which include state Agency staff as well as county auditors and/or other county representatives.
5. Be available for limited travel to work with vendors and county staff, as needed.
6. Work with the Agency towards completion of a beta version of Phase II by June 30, 2006.
7. Work with the Agency toward phasing in full functionality of Phase II by June 30, 2007.

### **1.3 MINIMUM QUALIFICATIONS**

Consultants bidding on this proposal must be or be able to be licensed to do business in the State of Washington.

### **1.4 FUNDING**

Funding for this project will come from the federal HAVA funds awarded to the Agency. Any contract awarded as a result of this procurement is contingent upon the continued availability of sufficient funding. The Agency also reserves the right to cancel or to reissue the RFQQ in whole or in part, prior to execution of a contract in order to accommodate funding limitations.

### **1.5 PERIOD OF PERFORMANCE**

The period of performance of any contract resulting from this RFQQ is tentatively scheduled to last approximately 18 months, beginning on or about January 3, 2006 – June 30, 2007. Amendments extending the period of performance, if any, shall be at the sole discretion of the Agency.

### **1.6 DEFINITIONS**

Definitions for the purposes of this RFQQ include:

Agency – The Office of the Secretary of State is the Agency of the State of Washington that is issuing this RFQQ.

Consultant – Individual or company submitting a proposal in order to attain a contract with the Agency.

Contractor – Individual or company whose proposal has been accepted by the Agency and is awarded a fully executed, written contract.

EMS - Commercially marketed Election Management System. May also be referred to as a Voter Registration System.

Proposal – A formal offer submitted in response to this solicitation.

Request for Qualifications and Quotations (RFQQ) – Refers to this formal procurement document in which services needed are identified and firms are invited to provide their qualifications to provide the services and their rates and costs for same.

VRDB – The Statewide Voter Registration Database, which, along with the 39 county Elections Management Systems, is a component of the Washington State Elections Information System being built by the Agency.

### 1.7 ADA

The Agency complies with the Americans with Disabilities Act (ADA). Consultants may contact the RFQQ Coordinator to receive this Request for Qualifications and Quotations in Braille or on tape.

## 2. GENERAL INFORMATION FOR CONSULTANTS

### 2.1 RFQQ COORDINATOR

The RFQQ Coordinator is the sole point of contact in the Agency for this procurement. All communication between the Consultant and the Agency upon receipt of this RFQQ shall be with the RFQQ Coordinator, as follows:

Name	Brenda Landers
Address	P.O. Box 40220 (2nd floor, Legislative Building)
City, State, Zip Code	Olympia, WA 98504-0220
Phone Number	(360) 902-4154
Fax Number	(360) 586-5629
Email Address	<a href="mailto:blanders@secstate.wa.gov">blanders@secstate.wa.gov</a>

Any other communication will be considered unofficial and non-binding on the Agency. Consultants are to rely on written statements issued by the RFQQ Coordinator. Communication directed to parties other than the RFQQ Coordinator may result in disqualification of the Consultant.

### 2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

Procurement Activity:	Due By/End Date:
RFQQ advertised & posted on Agency web site	November 7, 2005
Interested vendors submit Notice of Intent to Bid to Agency	November 14, 2005
Proposals due	November 22, 2005
Evaluate proposals	December 2, 2005
Conduct oral interviews with finalists (if needed)	December 12, 2005
Announce "Apparent Successful Contractor" and send notification via fax or email to unsuccessful proposers	December 14, 2005
Hold debriefing conferences (if requested)	December 22, 2005
Negotiate contract and file with OFM	December 16, 2005
End of filing period for contract with OFM	January 3, 2006
Begin contract work	January 3, 2006

The Agency reserves the right to revise the above schedule.

### 2.3 INFORMATION WILL BE POSTED ON THE WEB

This RFQQ will be posted on the Agency's web site ([www.secstate.wa.gov/office/procurements.aspx](http://www.secstate.wa.gov/office/procurements.aspx)) on or after November 1, 2005. The Agency will also post on the same web site:

- 1 Any additional written questions received and the Agency's responses to those questions that the Agency deems to be relevant to the solicitation.

## 2. Any and all addendum or changes to the RFQQ.

It is the responsibility of the Consultant to check the web site for information related to this RFQQ. The Agency will not mail the supplemental information to bidders and will not be responsible for bidder failure to be aware of clarifying information or addendum to the RFQQ.

### 2.4 QUESTIONS AND ANSWERS

Only written questions from consultants will be considered for an Agency response. Written questions from consultants that the Agency deems relevant to this RFQQ will be posted on the web site along with the Agency's response. Requests by Consultants for meetings or telephone discussions will not be honored. This policy, along with posting written questions and answers on the Agency web site, ensures that all consultants have access to the same information. The Agency's requirement that all questions be submitted in writing (email is acceptable and encouraged) is intended to eliminate misinterpretation or misrepresentation of a consultant's question by the RFQQ coordinator.

### 2.5 SUBMISSION OF PROPOSALS

Consultants are required to submit two copies of their proposal, but the submittal must have original signatures of the vendor representative authorized to submit such a proposal. Proposal, whether mailed or hand delivered, must arrive at the Agency no later than 5:00 p.m., local time, on November 22, 2005. The Agency may make additional photocopies of the proposals for purposes of providing copies to the evaluation team.

In a joint effort to save costs, reduce waste and produce energy savings, consultants are encouraged to use double-sided printing and recyclable materials. Consultants are highly encouraged to refrain from submitting RFQQ responses in 3-ring binders, spiral bindings, and/or other non-recyclable presentation folders.

The proposal is to be sent to the RFQQ Coordinator at the address noted in Section 2.1. The envelope should be clearly marked to the attention of the RFQQ Coordinator.

Consultants mailing proposals should allow normal mail delivery time to ensure timely receipt of their proposal by the RFQQ Coordinator. Consultants assume the risk for the method of delivery chosen. The Agency assumes no responsibility for delays caused by any delivery service. Proposals may not be transmitted using electronic media such as facsimile transmission.

Late proposals will not be accepted and will be automatically disqualified from further consideration. All proposals and any accompanying documentation become the property of the Agency and will not be returned.

### 2.6 PROPRIETARY INFORMATION/PUBLIC DISCLOSURE

Materials submitted in response to this competitive procurement shall become the property of the Agency.

All proposals received shall remain confidential until the contract, if any, resulting from this RFQQ is signed by the Assistant Secretary of State or his delegate and the apparent successful Contractor; thereafter, all proposals shall be deemed public records as defined in RCW 42.17.250 to 42.17.340, "Public Records."

Any information in the proposal that the Consultant desires to claim as proprietary and exempt from disclosure under the provisions of RCW 42.17.250 to 42.17.340 must be clearly designated. The page must be identified and the particular exception from disclosure upon which the Consultant is making the claim. Each page claimed to be exempt from disclosure must be clearly identified by the word "Confidential" printed on the lower right hand corner of the page.

The Agency will consider a Consultant's request for exemption from disclosure; however, the Agency will make a decision predicated upon chapter 42.17 RCW and chapter 143-06 of the Washington Administrative Code. Marking the entire proposal exempt from disclosure will not be honored. The Consultant must be reasonable in designating information as confidential. If any information is marked as proprietary in the proposal, such information will not be made available until the affected proposal has been given an opportunity to seek a court injunction against the requested disclosure.

A charge will be made for copying and shipping, as outlined in RCW 42.17.300. No fee shall be charged for inspection of contract files, but twenty-four (24) hours notice to the RFQQ Coordinator is required. All requests for information should be directed to the RFQQ Coordinator.

## *2.7 REVISIONS TO THE RFQQ*

In the event it becomes necessary to revise any part of this RFQQ, the published questions and answers, RFQQ addendum (if any), and any other pertinent information will be published on the Agency's web site at [www.secstate.wa.gov/office/procurements.aspx](http://www.secstate.wa.gov/office/procurements.aspx)

The Agency also reserves the right to cancel or to reissue the RFQQ in whole or in part, prior to execution of a contract.

## *2.8 MINORITY & WOMEN-OWNED BUSINESS PARTICIPATION*

In accordance with the legislative findings and policies set forth in chapter 39.19 RCW, the state of Washington encourages participation in all of its contracts by firms certified by the Office of Minority and Women's Business Enterprises (OMWBE). Participation may be either on a direct basis in response to this solicitation or on a subcontractor basis. However, no preference will be included in the evaluation of proposals, no minimum level of MWBE participation shall be required as a condition for receiving an award and proposals will not be rejected or considered non-responsive on that basis. Any affirmative action requirements set forth in federal regulations or statutes included or referenced in the contract documents will apply.

The established annual procurement participation goals for MBE is 8 percent and for WBE, 4 percent, for this type of project. These goals are voluntary. Bidders may contact OMWBE at 360/753-9693 to obtain information on certified firms.

## *2.9 ACCEPTANCE PERIOD*

Proposals must provide 60 days for acceptance by Agency from the due date for receipt of proposals.

## *2.10 RESPONSIVENESS*

All proposals will be reviewed by the RFQQ Coordinator to determine compliance with administrative requirements and instructions specified in this RFQQ. The Consultant is specifically notified that failure to comply with any part of the RFQQ may result in rejection of the proposal as non-responsive.

The Agency also reserves the right, however, at its sole discretion to waive minor administrative irregularities.

## *2.11 MOST FAVORABLE TERMS*

The Agency reserves the right to make an award without further discussion of the proposal submitted. Therefore, the proposal should be submitted initially on the most favorable terms which the consultant can propose. The Agency does reserve the right to contact a consultant for clarification of its proposal.

The consultant should be prepared to accept this RFQQ for possible incorporation into a contract resulting from this RFQQ. Contract negotiations may also incorporate some, or all, of the consultant's entire proposal. It is understood that the proposal will become a part of the official procurement file on this matter without obligation to the Agency.

## *2.12 CONTRACT*

The apparent successful Contractor will be expected to enter into a contract which is substantially the same as the sample contract included as Attachment B. In no event is a Consultant to submit its own standard contract terms and conditions in response to this solicitation. Any proposed exceptions, modifications or additions to the contract terms and conditions attached as part of Attachment B must be submitted as part of the Consultant's proposal and clearly identified, as allowed in the Certifications and Assurances section, Attachment A to this solicitation. The Agency will review requested exceptions and accept or reject the same at its sole discretion. The Agency will consider proposed exceptions as an indication that the Consultant would not, under any circumstance, accept the language in the sample contract.

## *2.13 COSTS TO PROPOSE*

The Agency will not be liable for any costs incurred by the Consultant in preparation of a proposal submitted in response to this RFQQ, in conduct of a presentation or oral interview, or any other activities related to responding to this RFQQ.

## *2.14 NO OBLIGATION TO CONTRACT*

This RFQQ does not obligate the State of Washington or the Agency to contract for services specified herein.

## *2.15 REJECTION OF PROPOSALS*

The Agency reserves the right at its sole discretion to reject any and all proposals received without penalty and not to issue a contract as a result of this RFQQ.

## **2.16 COMMITMENT OF FUNDS**

The Assistant Secretary of State (or his designee) is the only individual who may legally commit the Agency to the expenditures of funds for a contract resulting from this RFQQ. No cost chargeable to the proposed contract may be incurred before receipt of a fully executed contract.

## **2.17 INSURANCE COVERAGE**

Should a contract be awarded pursuant to this RFQQ, the contractor(s) will be required to provide insurance coverage as described in Attachment B, Sample Personal Service Contract.

## **3. PROPOSAL CONTENTS**

The four major sections of the proposal are to be submitted in the order noted below:

1. Letter of Submittal, including signed Certifications and Assurances (Attachment A to this RFQQ).
2. Qualifications
3. Quotation
4. Project Estimated Effort Matrix (Attachment C to this RFQQ).

Proposals must provide information in the same order as presented in this document with the same headings. This will not only be helpful to the evaluators of the proposal, but should assist the Consultant in preparing a thorough response.

Items in this section marked “mandatory” must be included as part of the proposal in order for the proposal to be considered responsive; however, these items are not scored. Items marked “scored” are those that are awarded points as part of the evaluation conducted by the evaluation team.

### **3.1 LETTER OF SUBMITTAL (MANDATORY)**

The Letter of Submittal and the attached Certifications and Assurances form (Attachment A to this RFQQ) must be signed and dated by a person authorized to legally bind the Consultant to a contractual relationship, e.g., the President or Executive Director if a corporation, the managing partner if a partnership, or the proprietor if a sole proprietorship. Along with introductory remarks, the Letter of Submittal is to include a high level summary of the Consultant's qualifications to perform the work requested.

### **3.2 QUALIFICATIONS SECTION (MANDATORY/SCORED)**

#### **3.2.1 Business Information**

- a. State the name of the company or organization, address, phone number, fax number, email address, legal status of entity (ownership) and year entity was established as it now substantially exists. If applying as an independent Consultant, rather than as a representative of a company or organization, this must be clearly stated.
- b. Consultants must clearly disclose any formal affiliation with a hardware/software manufacturer or vendor, including employment with such an entity or serving as a seller/reseller of the vendor's products. If, after Agency review of this information it is determined by the Agency that a conflict of interest exists such that the Consultant may not provide an objective approach to the work being requested, the Consultant may be disqualified from further consideration for the award of a

contract.

- c. Provide the firm's Federal Employer Tax Identification number of Social Security number and the Washington Uniform Business Identification (UBI) number issued by the State of Washington's Department of Revenue.
- d. Identify any Washington State employees or former Washington State employees employed or on the firm's governing board as of the date of the proposal. Include their position and responsibilities within the consultant's organization. If following a review of this information, it is determined by the Agency that a conflict of interest exists, the Consultant may be disqualified from further consideration for the award of a contract.
- e. If the Consultant's staff or subcontractor's staff was an employee of the State of Washington during the past 24 months, or is currently a Washington state employee, identify the individual by name, the Agency previously or currently employed by, job title or position held and separation date.
- f. If the Consultant has had a contract terminated for default in the last five years, describe such incident. Termination for default is defined as notice to stop performance due to the Consultant's non-performance or poor performance and the issue of performance was either (1) not litigated due to inaction on the part of the Consultant, or (2) litigated and such litigation determined that the Consultant was in default.
- g. Submit full details of the terms for default including the other party's name, address, and phone number. Present the Consultant's position on the matter. The Agency will evaluate the facts and may, at its sole discretion, reject the proposal on the grounds of the past experience. If no such termination for default has been experienced by the Consultant in the past five years, so indicate.

### 3.2.2 Qualifications

#### a. Experience (scored)

The Consultant should provide the following, at a minimum:

- Describe the past experience of the Consultant. The description should clearly indicate the ability to provide the services requested in this RFQQ.
- Describe the Consultant's demonstrated experience in, and approach to project management.
- Describe the Consultant's demonstrated experience in developing functional, eye appealing, and easy to use web site portals.
- Describe the Consultant's experience and skills using Web services, BizTalk software or similar technology that allow for communication and exchange of data between organizations.
- Describe the Consultant's experience in developing applications using technology tools and platforms that will serve as the foundation for the VRDB as described in Section 1.2 of this RFQQ. Describe those applications and highlight similarities to the proposed project.
- Describe any other relevant experience that demonstrates the qualifications of the Consultant for the performance of the potential contract.
- Include a list of contracts the Consultant has had during the last five years that relate to the Consultant's ability to perform the services requested. List contract reference number, contract period of performance, and a client reference for each project including current telephone, email, fax and mailing address information. The Consultant must grant permission to the Agency to contact all references, at Agency option. Do not include current Agency staff as references. References, if utilized, will be contacted and scored for the top-scoring proposal(s) only.
- If the consultant or any subcontractor contracted with the State of Washington during the past 24 months, indicate the name of the Agency,

the contract number and project description and/or other information available to identify the contract.

b. Staffing (mandatory / scored)

- Indicate three staff members that the Consultant shall make available to work on the project during the anticipated 18-month time frame, January 3, 2006 – June 30, 2007. The three staff members must be skilled using BizTalk 2004 and the Agency's standards referenced in Section 1.2 of this RFQQ. Provide the resume's of the three staff members who would be assigned to this project, including information on each individuals' particular skills, education, experience, significant accomplishments and any other pertinent information related to this project.
- Provide a description of the reporting structure within the Consultant's organization, including the reporting structure between the Consultant and subcontractors.
- List any sub-consultants that would be assigned to the project and describe what services they would provide. Provide the business information requested in Section 3.2.1 for each subcontractor.
- List names, addresses, telephone numbers, fax numbers and email addresses of three business references for which work has been accomplished by the assigned staff and sub-contractors and briefly describe the type of service provided for them. The Consultant must grant permission to the Agency to contact the references. Do not include current Agency staff as references. References, if utilized, will be contacted and scored for the top-scoring proposal(s) only.

c. Schedule (scored)

- Describe the Consultant's ability to provide the identified staff members for the duration of the project, January 3, 2006 through June 30, 2007.
- Describe the ability, and any limitations, of the staff members to be available to work in or travel to Olympia, Washington to work with and/or meet with project team members as described in Section 1.2 of this RFQQ.

d. OMWBE Certification (Optional and not scored)

- Include proof of certification issued by the Washington State Office of Minority and Women's Business Enterprises if certified minority-owned firm and/or women-owned firm(s) will be participating on this project.

### 3.3 QUOTATIONS SECTION

#### 3.3.1 Identification of Costs (scored)

Consultants should indicate their proposed hourly rate(s) for *each* proposed staff member and subcontractor. Consultants should indicate if travel and per diem costs will be required, and should estimate those costs for each staff member assuming the requirement to work in Olympia a minimum of three days per week for the duration of the contract. Finally, Consultants should identify any additional administrative or overhead costs, taxes or other fees for which reimbursement would be required.

The evaluation process is designed to award this procurement not necessarily to the Consultant of least cost, but rather to the Consultant whose proposal best meets the requirements of this RFQQ. However, Consultants

are encouraged to submit proposals that are consistent with State government efforts to conserve state resources.

### 3.4 PROJECT ESTIMATED EFFORT MATRIX (MANDATORY – ATTACHMENT C)

The Agency is interested in understanding more about the estimated efforts associated with each project requirement. While it's understood that more information will need to be gathered, the Agency is looking for the best estimate based on the Consultant's experience. In the effort estimate column in the matrix, the Consultant shall estimate the level of effort on a scale of 1 to 10, with 1 being low and 10 being high effort.

## 4. EVALUATION AND CONTRACT AWARD

### 4.1 EVALUATION PROCEDURE

Responsive proposals will be evaluated strictly in accordance with the requirements stated in this solicitation and any addendum issued. The evaluation of proposals shall be accomplished by an evaluation team, to be designated by the Agency, which will determine the ranking of the proposals.

The Agency will select and contact the top-scoring firms to schedule a date, time and location for an oral interview.

### 4.2 EVALUATION WEIGHTING AND SCORING

The following weighting and points will be assigned to the written proposal for evaluation purposes:

#### QUALIFICATIONS SECTION (75 POINT MAXIMUM)

Experience of the Consultant ≤35 points

- Experience relevant to the project
- Project management experience
- Experience with agency standard platform and tools

Staff qualifications ≤ 30 points

- Qualifications of staff assigned to the project (skillset must include BizTalk 2004, Microsoft SQL Server 2000, Microsoft Windows 2003 environment, XML 1.0, and Microsoft .NET framework).
- Qualifications of proposed sub-contractors
- Project team structure and support

Schedule ≤10 points

- Availability to work within the contract period
- Availability to work in Olympia

#### QUOTATIONS SECTION (25 POINT MAXIMUM)

- Blended hourly rate for proposed staff/subcontractors
- Estimated travel costs

-Other fees and costs

Sub-Total for Written Proposal (100 POINTS MAXIMUM)

REFERENCES (TOP-SCORING PROPOSER(S) ONLY – 15  
POINTS MAXIMUM)

GRAND TOTAL (115 POINTS MAXIMUM)

References will be contacted for the proposals(s) scoring highest on the written Qualification and Quotations sections. References will then be scored and included in the total score.

#### *4.3 ORAL INTERVIEWS WILL BE REQUIRED*

As indicated above, both written submittals and oral interviews will be utilized in selecting the winning proposal. The Agency, at its sole discretion, will select the top proposals scoring highest on the written proposal (including references) for an oral interview.

The Agency will contact the finalists to schedule a date, time and location for oral interviews. Interviews may be conducted in person or via telephone, at the sole discretion of the Agency. Commitments made by the Consultant at the oral interview, if any, will be considered binding. The score from the oral interview will be considered independently and will determine the apparently successful proposer. Final determination of the Consultant selected for contract award will also be at the sole discretion of the Agency.

#### *4.4 NOTIFICATION TO CONSULTANTS*

Consultants whose proposals have not been selected for further negotiation or award will be notified via FAX or by email.

#### *4.5 DEBRIEFING OF UNSUCCESSFUL CONSULTANTS*

Upon request, a debriefing conference will be scheduled with an unsuccessful Consultant. The request for a debriefing conference must be received by the RFQQ Coordinator within three (3) business days after the Notification of Unsuccessful Consultant letter is faxed/emailed to the Consultant. The debriefing must be held within three (3) business days of the request or as otherwise mutually agreed upon by the Agency and the Consultant.

Discussion will be limited to a critique of the requesting Consultant's proposal. Comparisons between proposals or evaluations of the other proposals will not be allowed. Debriefing conferences may be conducted in person or on the telephone and will be scheduled for a maximum of one hour.

#### *4.6 PROTEST PROCEDURE*

This procedure is available to Consultants who submitted a response to this solicitation document and who have participated in a debriefing conference. Upon completing the debriefing conference, the Consultant is allowed three (3) business days to file a protest of the acquisition with the RFQQ Coordinator. Protests may be submitted by facsimile, but should be followed by the original document.

Consultants protesting this procurement shall follow the procedures described below. Protests that do not follow these procedures shall not be considered. This protest

procedure constitutes the sole administrative remedy available to Consultants under this procurement.

All protests must be in writing and signed by the protesting party or an authorized Agent. The protest must state the grounds for the protest with specific facts and complete statements of the action(s) being protested. A description of the relief or corrective action being requested should also be included. All protests shall be addressed to the RFQQ Coordinator.

Only protests stipulating an issue of fact concerning the following subjects shall be considered:

1. A matter of bias, discrimination or conflict of interest on the part of the evaluator.
2. Errors in computing the score.
3. Non-compliance with procedures described in the procurement document or Agency policy.

Protests not based on procedural matters will not be considered. Protests will be rejected as without merit if they address issues such as: 1) an evaluator's professional judgment on the quality of a proposal, or 2) Agency's assessment of its own and/or other agencies needs or requirements.

Upon receipt of a protest, a protest review will be held by the Agency. The Secretary of State or an employee delegated by the Secretary of State who was not involved in the procurement will consider the record and all available facts and issue a decision within five business days of receipt of the protest. If additional time is required, the protesting party will be notified of the delay.

In the event a protest may affect the interest of another Consultant which submitted a proposal, such Consultant will be given an opportunity to submit its views and any relevant information on the protest to the RFQQ Coordinator.

The final determination of the protest shall:

1. Find the protest lacking in merit and uphold the Agency's action; or
2. Find only technical or harmless errors in the Agency's acquisition process and determine the Agency to be in substantial compliance and reject the protest; or
3. Find merit in the protest and provide the Agency options which may include:
  - a. Correct the errors and re-evaluate all proposals, and/or
  - b. Reissue the solicitation document and begin a new process, or
  - c. Make other findings and determine other courses of action as appropriate.

If the Agency determines that the protest is without merit, the Agency will enter into a contract with the apparently successful contractor. If the protest is determined to have merit, one of the alternatives noted in the preceding paragraph will be taken.

## **5. RFQQ ATTACHMENTS**

Attachment A:	Certifications and Assurances
Attachment B:	Sample Personal Service Contract
Attachment C:	Project Estimated Effort Matrix
Attachment D:	Project Organizational Chart

## ATTACHMENT A

### CERTIFICATION AND ASSURANCES

I/we make the following certifications and assurances as a required element of the proposal to which it is attached, understanding that the truthfulness of the facts affirmed here and the continuing compliance with these requirements are conditions precedent to the award or continuation of the related contract(s):

1. I/we declare that all answers and statements made in the proposal are true and correct.
2. The prices and/or cost data have been determined independently, without consultation, communication, or agreement with others for the purpose of restricting competition. However, I/we may freely join with other persons or organizations for the purpose of presenting a single proposal.
3. The attached proposal is a firm offer for a period of 60 days following receipt, and it may be accepted by the Agency without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 60-day period.
4. In preparing this proposal, I/we have not been assisted by any current or former employee of the state of Washington whose duties relate (or did relate) to this proposal or prospective contract, and who was assisting in other than his or her official, public capacity.
5. I/we understand that the Agency will not reimburse me/us for any costs incurred in the preparation of this proposal. All proposals become the property of the Agency, and I/we claim no proprietary right to the ideas, writings, items, or samples, unless so stated in this proposal.
6. Unless otherwise required by law, the prices and/or cost data which have been submitted have not been knowingly disclosed by the Proposer and will not knowingly be disclosed by him/her prior to opening, directly or indirectly to any other Proposer or to any competitor.
7. I/we agree that submission of the attached proposal constitutes acceptance of the solicitation contents and the attached sample contract and general terms and conditions. If there are any exceptions to these terms, I/we have described those exceptions in detail on a page attached to this document as required by Section 2.12 of the RFQQ.
8. No attempt has been made or will be made by the Proposer to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

---

Signature of Proposer/Consultant

---

Title

Date

## ATTACHMENT B

# SAMPLE CONTRACT

### CONTRACT FOR PERSONAL SERVICES BETWEEN THE STATE OF WASHINGTON OFFICE OF THE SECRETARY OF STATE AND

---

#### PARTIES

This Contract is made and entered into by and between the State of Washington, Office of the Secretary of State, P.O. Box 40220, Olympia, Washington 98504-0220, hereinafter referred to as the "Agency," and (Name and address of Contractor), hereinafter referred to as the "Contractor", for the express purposes set forth in the following provisions of this contract.

#### RECITALS

The state of Washington, acting by and through the Agency, issued a Request for Qualifications and Quotation (RFQQ) # 06-02 dated November 7, 2005 for the purpose of purchasing personal information technology services with its authority under chapter 39.29 RCW.

(Name of Contractor) submitted a timely Response to the Agency's above referenced RFQQ.

The Agency evaluated all properly submitted Responses to the above referenced RFQQ and has identified (Name of Contractor) as the apparently successful Vendor.

The Agency has determined that entering into a contract with (Name of Contractor) will meet the Agency's needs and will be in the Agency's best interest.

NOW THEREFORE, the Agency awards to (Name of Contractor) this Personal Services Contract, the terms and conditions of which shall govern the Contractor's furnishing to the Agency the services described below.

IN CONSIDERATION of the mutual promises as hereinafter set forth, the parties agree as follows:

#### 1. Definition of Terms

**“Agency”** shall mean the Office of the Secretary of State of the state of Washington.

**“Agency Project Manager”** shall mean the person designated by the Agency who is assigned as the primary contact person for the Contractor while performing work under this Contract.

**“Agent”** shall mean the Secretary of State, and/or the delegate authorized in writing to act on the Secretary of State’s behalf.

**“Contract”** shall mean this document, including all Exhibits, and all amendments hereto.

**“Contractor”** shall mean (Name of Contractor) and shall include all employees, agents and subcontractors of the Contractor.

**“Contractor Project Manager”** shall mean a representative of the Contractor who is assigned as the primary contact person for the Agency whom the Agency shall work with for the duration of this Contract.

**“Confidential Information”** shall mean information that may be exempt from disclosure to the public or other unauthorized persons under either chapter 42.17 RCW or other state or federal statutes. Confidential information includes, but is not limited to: (1) names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver’s license numbers, medical data, law enforcement records, or other information identifiable to an individual that relates to any of these types of information; (2) agency source code or object code, agency security data, source code or other proprietary information owned by election management system vendors with whom the Agency does business, or other trade secrets.

**“Effective Date”** shall mean the first date this Contract is in full force and effect, which will be the date of the last signature of a party to this Contract.

**“EMS”** shall mean a commercially marketed Election Management System. May also be referred to as a Voter Registration System.

**“Personal Services”** or **“Services,”** shall mean professional or technical expertise provided by the Contractor to accomplish the tasks or duties set forth in this Contract.

**“Price”** shall mean charges, costs, rates, and/or fees charged for the Services provided under this Contract and shall be paid in United States dollars.

**“Proprietary Information”** shall mean information owned by the Contractor or other firms, companies or organizations that develop and/or market EMS systems to which the Contractor or firm claims a protectable interest under law. Proprietary information includes, but is not limited to, information protected by copyright, patent, trademark, or trade secret laws.

**“RCW”** shall mean the Revised Code of Washington.

**“Response”** shall mean the Contractor’s Response to the Agency’s RFQQ.

**“RFQQ”** shall mean the formal Request for Qualifications and Quotation issued by the Agency, including all its amendments and modifications, in which services needed are identified and firms are invited to provide their qualifications to provide the services and their rates and costs for same.

**“Specifications”** shall mean the technical and other specifications set forth in the RFQQ and any additional specifications set forth in Contractor’s Response.

**“Subcontractor”** shall mean one not in the employment of the Contractor, who is performing all or part of those services under this contract under a separate contract with the Contractor. The terms “Subcontractor” and “Subcontractors,” means Subcontractor(s) in any tier.

**“Work Product(s)”** shall mean data and products produced under this contract including but not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models,

processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law.

## **STATEMENT OF WORK**

### **2. Statement of Work**

The purpose of this contract is to assist the state with development of a single, comprehensive, voter registration database for the State of Washington.

The Contractor will provide services and staff and otherwise do all things necessary for or incidental to the performance or work, as set forth below:

---

The CONTRACTOR shall produce the following written reports or other written documents (deliverables) by the dates indicated below: **(Include deliverables with due dates here)**

All written reports required under this contract must be delivered to \_\_\_\_\_, the AGENCY Project Manager, in accordance with the schedule above. Any oral reports required under this contract must be presented at the location requested by the AGENCY.

## **CONTRACT TERM**

### **3. Period of Performance**

(a) The period of performance for the initial term of this contract will be from January 3, 2006 or date of execution, whichever is later, through June 30, 2007.

(b) This contract's term may be extended for a period of up one (1) additional year, provided that the extensions shall be at the Agency's option, and that the extension is mutually agreed upon between the Agency and the Contractor. Any extensions shall be effected by an amendment to this contract. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties. The Agency must provide written notice of its intent to extend this contract to the Contractor not less than thirty (30) calendar days prior to the then-current Contract term's expiration and the Contractor must accept such extension prior to the then-current Contract term's expiration. The total term of this contract shall not exceed two (2) years. No change in terms and conditions shall be permitted during these extensions unless specifically agreed to in writing by both the Agency and the Contractor.

### **4. Commencement of Work**

Under the provisions of Chapter 39.29 RCW, this personal service contract is required to be filed with the Office of Financial Management (OFM). No contract required to be so filed is effective and no work shall be commenced nor payment made until ten (10) working days following the date of filing, and if required, until approved by OFM. In the event OFM fails to approve the contract, the contract shall be null and void.

### **5. Survivorship**

The terms of Section 14 entitled "Protection of Confidential Information" shall survive the termination of this Contract.

## **PRICING, INVOICE AND PAYMENT**

### **6. Pricing**

(a) The Agency shall pay an amount not to exceed \$ \_\_\_\_\_ for the performance of all things necessary for or incidental to the performance of work as set forth in the Statement of Work.

(b) The Contractor agrees to provide services at the prices set forth below, based on the number of hours worked multiplied by the following rates:

.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

No other prices, other than reimbursable expenses as identified below, shall be charged by the Contractor for implementation of the Contractor's Response.

(c) Prices may not be increased during the initial term of the Contract. Price adjustments will be taken into consideration by the Agency's Project Manager when determining whether to extend this Contract.

(d) The Contractor shall receive reimbursement for travel and other expenses as identified below or as authorized in advance by the Agency as reimbursable. The maximum amount to be paid to the Contractor for authorized expenses shall not exceed \$ \_\_\_\_\_, which amount is included in the contract total in Paragraph (a), above. Such expenses may include: airfare (economy or coach class only), other transportation expenses, and lodging and subsistence necessary during period of required travel. The Contractor shall receive compensation for travel expenses at current State travel reimbursement rates. To receive reimbursement, the Contractor must provide a detailed breakdown of authorized expenses, including original lodging receipts, identifying what was expended and when.

### **7. Invoice and Payment**

(a) The Agency will pay the Contractor upon receipt of properly completed invoices, which shall be submitted to the Agency Billing Contact, Michelle Boutilier, Financial Services, not more often than monthly. The invoices shall describe and document to the Agency's satisfaction a description of the number of hours worked and the work performed. The Contract number must appear on all invoices.

(b) Payment shall be considered timely if made by the Agency within thirty (30) days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Contractor.

(c) The Agency may, in its sole discretion, terminate the contract or withhold payment claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any terms or conditions of this contract.

### **8. Advance Payment Prohibited**

No payments in advance or in anticipation of services or supplies to be provided under this contract shall be made by the Agency.

**9. Overpayments to Contractor**

Contractor shall refund to Agency the full amount of any erroneous payment or overpayment under this Contract within thirty (30) days' written notice. If Contractor fails to make timely refund, Agency may charge Contractor one percent (1%) per month on the amount due, until paid in full.

**10. Taxes**

All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for the Contractor or its employees shall be the sole responsibility of the Contractor.

**11. Ownership/Rights in Data**

(a) The Agency and the Contractor agree that all data and work products (collectively called "Work Product") produced pursuant to this Contract shall be considered work made for hire under the U.S. Copyright Act, 17 U.S.C. and shall be owned by the Agency. The Contractor is hereby commissioned to create the Work Product. Ownership includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such Work Product.

(b) If for any reason the Work Product would not be considered a work made for hire under applicable law, the Contractor assigns and transfers to the Agency the entire right, title and interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof.

(c) The Contractor shall execute all documents and perform such other proper acts as the Agency may deem necessary to secure for the Agency the rights pursuant to this section.

(d) The Contractor shall not use or in any manner disseminate any Work Product to any third party, or represent in any way Contractor ownership in any Work Product, without the prior written permission of the Agency. The Contractor shall take all reasonable steps necessary to ensure that its agents, employees, or Subcontractors shall not copy or disclose, transmit or perform any Work Product or any portion thereof, in any form, to any third party.

**12. Access to Data**

In compliance with RCW 39.29.080, the Contractor shall provide access to data generated under this contract to the Agency, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor's reports, including computer models and methodology for those models.

**13. Site Security**

While on the Agency's premises, the Contractor, its agents, employees, or subcontractors shall conform in all respects with physical, fire, or other security regulations.

**14. Protection of Confidential Information**

(a) The Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.17 RCW or other state or federal statutes ("Confidential Information" as defined in this Contract). The Contractor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make it known to any other party without the Agency's express written consent or as provided by law. The Contractor agrees to release such information or material only to employees or Subcontractors who have signed a nondisclosure agreement, the terms of which have been previously approved by the Agency. The contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.

(b) Vendors and consultants should be aware that this contract will require them to work with the election/voting records of many counties and that they may be exposed to or work with proprietary information of other vendors/consultants. It must be clearly understood that this information is also considered Confidential Information and that any such Confidential Information obtained by/through this contract cannot be used for any reason whatsoever.

(c) Immediately upon expiration or termination of this Contract, the Contractor shall, at the Agency's option: (i) certify to the Agency that the Contractor has destroyed all Confidential Information; or (ii) return all Confidential Information to the Agency; or (iii) take whatever other steps the Agency requires of the Contractor to protect the Confidential Information.

(d) The Contractor, including all employees or subcontractors assigned to work under this Contract, shall maintain a log documenting the following: the Confidential Information received in the performance of this Contract; the purpose(s) for which the Confidential Information was received; who received, maintained and used the Confidential Information; and the final disposition of the Confidential Information. The Contractor's records shall be subject to inspection, review or audit in accordance with Review of Contractor's Records.

(e) The Agency reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by the Contractor through this Contract.

(f) Violation of this section by the Contractor or its Subcontractors may result in termination of this Contract and demand for return of all Confidential Information, monetary damages, or penalties.

## **15. Certificate of Debarment and Suspension**

The Certificate of Debarment and Suspension, Exhibit A must be completed and signed by the Contractor and returned as part of the signed contract.

## **CONTRACT MANAGEMENT**

## **16. Contractor's Project Manager**

The Contractor has appointed a Project Manager under this Contract who will provide oversight of Contractor activities conducted hereunder. The Contractor's Project Manager will be the principal point of contact for the Agency concerning the Contractor's performance under this Contract. The Contractor shall notify the Agency's Project Manager, in writing, when there is a new Contractor Project Manager assigned to this Contract. The Contractor's Project Manager information is:

*Name:*

*Address:*

*Phone:*

*Fax:*

*E-mail:*

**17. Agency Project Manager**

The Agency has appointed a Project Manager under this Contract who will provide oversight of the activities conducted hereunder. The Agency's Project Manager will be the principal point of contact for the Contractor concerning business activities under this Contract. The Agency shall notify the Contractor's Project Manager, in writing, when there is a new Agency Project Manager assigned to this Contract. The Agency's Project Manager information is:

*Name:*

*Address:*

*Phone:*

*Fax:*

*E-mail:*

**18. Replacement of Contractor/Subcontractor Staff**

The Contractor is responsible to ensure that the same contract staff, including staff of any subcontractors, is committed and will be available until the completion of this contract. Any proposal by the Contractor for changes, replacement, or substitution of staff during the duration of this contract must be submitted to the Agency in writing. The Agency Project Manager shall have the sole discretion to accept or reject such proposal but such approval will not be unreasonably withheld. In no event shall such changes in staff take effect without the Agency Project Manager's written consent.

In the event the Contractor proposes replacement in contract staff, as a condition of accepting such changes, the Agency may require the Contractor to compensate the Agency, in the form of gratuitous services to the Agency, to offset the training and administrative costs incurred by the Agency in association with such replacement, an amount not to exceed \$250 per working day for up to 20 working days, the total amount not to exceed \$5,000 per replacement of contract staff.

**19. Independent Status of Contractor**

The parties intend that an independent contractor relationship will be created by this contract. The Contractor and his or her employees or agents performing under this contract are not employees or agents of the Agency. The Contractor will not hold himself/herself out as or claim to be an officer or employee of the Agency or of the State of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to such employee under law. Conduct and control of the work will be solely with the Contractor.

**20. Governing Law**

This contract shall be construed and interpreted in accordance with the laws of the State of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

**21. Subcontractors**

The Contractor may, with prior written permission from the Agency's Project Manager, , which consent shall not be unreasonably withheld, enter into subcontracts with third parties for its performance of any part of the Contractor's duties and obligations. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to the Agency for any breach in the performance of the Contractor's duties. For purposes of this Contract, the Contractor agrees that all Subcontractors shall be held to be agents of the Contractor. The Contractor shall be liable for any loss or damage to the Agency, including but not limited to personal injury, physical loss, harassment of the Agency's employee, or violations of the Patent and Copyright Indemnification, Protection of the Confidential Information, and Ownership/Rights in Data sections of this Contract occasioned by the acts or omissions of the Contractor's Subcontractors, their agents or employees. The Patent and Copyright Indemnification, Protection of Confidential Information, Ownership/Rights in Data, Publicity, and Review of Contractor's Records sections of this Contract shall apply to all Subcontractors.

**22. Assignment**

Neither this Contract, nor any claim arising under this Contract, shall be transferred or assigned by the Contractor without prior written consent of the Agency.

**23. Publicity**

The award of this Contract to the Contractor is not in any way an endorsement of the Contractor or the Contractor's Services by the Agency and shall not be so construed by the Contractor in any advertising or other publicity materials.

The Contractor agrees to submit to the Agency all advertising, sales promotion, and other publicity materials relating to this Contract and Services furnished by the Contractor wherein the Agency's name is mentioned, language is used, or Internet links are provided from which the connection of the Agency's name therewith may, in the Agency's judgment, be inferred or implied. The Contractor further agrees not to publish or use such advertising, sales promotion materials, publicity or the like through print, voice, the World Wide Web, and other communication media in existence or hereinafter developed without the express written consent of the Agency prior to such use.

**24. Review of Contractor's Records**

- a. The Contractor and its Subcontractors shall maintain books, records, documents and other evidence relating to this Contract, including but not limited to, protection and use of Confidential Information, and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature invoiced in the performance of this Contract. The Contractor shall retain all such records for six (6) years after the expiration or termination of this Contract. Records involving matters in litigation related to this Contract shall be kept for either one (1) year following the termination of litigation, including all appeals, or six (6) years from the date of expiration or termination of this Contract, whichever is later.
- b. All such records shall be subject at reasonable times and upon prior notice to examination, inspection, copying, or audit by personnel so authorized by the Agency's Contract Officer and/or the Office of the State Auditor and federal officials so authorized by law, rule, regulation or contract, when applicable, at no additional cost to the State. During this Contract's term, the Contractor shall provide access to these items within Thurston County. The Contractor shall be responsible for any

audit exceptions or disallowed costs incurred by the contractor or any of its Subcontractors.

- c. The Contractor shall incorporate in its subcontracts this section's records retention and review requirements.
- d. It is agreed that books, records, documents, and other evidence of accounting procedures and practices related to the Contractor's cost structure, including overhead, general and administrative expenses, and profit factors shall be excluded from the Agency's review unless the cost or any other material issue under this Contract is calculated or derived from these factors.

**25. Right of Inspection**

The Contractor shall provide right of access to its facilities to the Agency, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.

**26. Patent and Copyright Indemnification**

- a. The Contractor, at its expense, shall defend, indemnify, and save Agency harmless from and against any claims against the Agency that any Work Product supplied hereunder, or Agency's use of the Work Product within the terms of this Contract, infringes any patent, copyright, utility model, industrial design, mask work, trade secret, trademark, or other similar proprietary right of a third party worldwide. The Contractor shall pay all costs of such defense and settlement and any penalties, costs, damages and attorneys' fees awarded by a court or incurred by the Agency provided that Agency:
  - Promptly notifies the Contractor in writing of the claim, but Agency's failure to provide timely notice shall only relieve Contractor from its indemnification obligations if and to the extent such late notice prejudiced the defense or resulted in increased expense or loss to Contractor; and
  - Cooperates with and agrees to use its best efforts to encourage the Office of the Attorney General of Washington to grant Contractor sole control of the defense and all related settlement negotiations.
- b. If such claim has occurred, or in Contractor's opinion is likely to occur, Agency agrees to permit Contractor, at its option and expense, either to procure for Agency the right to continue using the Work Product or to replace or modify the same so that they become non-infringing and functionally equivalent. If use of the Work Product is enjoined by a court and Contractor determines that none of these alternatives is reasonably available, Contractor, at its risk and expense, will take back the Work Product and provide Agency a refund. In the case of Work Product, Contractor shall refund to Agency the entire amount Agency paid to Contractor for Contractor's provision of the Work Product.
- c. Contractor has no liability for any claim of infringement arising solely from:
  - Contractor's compliance with any designs, specifications or instructions of Agency
  - Modification of the Work Product by the Agency or a third party without the prior knowledge and approval of Contractor; or
  - Use of the Work Product in a way not specified by Contractor;Unless the claim arose against Contractor's Work Product independently of any of these specified actions.

**27. Hold Harmless**

To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless State, agencies of State and all officials, agents and employees of State, from and against all claims for injuries or death arising out of or resulting from the

performance of the Contract. Contractor's obligation to indemnify, defend, and hold harmless includes any claim by Contractors' agents, employees, representatives, or any subcontractor or its employees.

Contractor expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to Contractor's or any subcontractor's performance or failure to perform the Contract. Contractor's obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials.

Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless State and its agencies, officials, agents or employees.

## **28. Insurance**

The Contractor shall provide the following insurance coverage which shall be maintained in full force and effect during the term of this contract. The intent of the required insurance is to protect the State should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the Contractor or subcontractor, or agents of either, while performing services under this contract.

- Commercial General Liability Insurance, including contractual liability for both bodily injury and property damage liability with a limit of not less than \$1,000,000 each occurrence. Additionally, the Contractor is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.
- Automobile Liability: In the event that services delivered pursuant to this contract involve the use of vehicles, either owned or unowned by the Contractor, automobile liability insurance shall be required. The minimum limit for automobile liability is \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.
- Employer's liability with limits of not less than \$1,000,000 each accident;
- Software errors and omissions liability covering damages arising out of negligent acts, errors, or omissions committed by the Contractor or the Contractor's employees in the performance of this contract, with a limit of liability of not less than \$2,000,000 each claim;
- The Contractor shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, the Agency may collect from the Contractor the full amount payable to the Industrial Insurance accident fund. The Agency may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by the Agency under this contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.

The insurance required shall be issued by an insurance company/ies authorized to do business within the State of Washington, and shall name the state of Washington, its agents and employees as additional insureds under the insurance policy/ies. All policies shall be primary to any other valid and collectable insurance. Contractor shall instruct its insurers to give Agency 30 days advance notice of any insurance cancellation.

The Contractor shall submit to Agency within 15 days of the contract effective date, a certificate of insurance which outlines the coverage and limits defined in this section of

the contract. Contractor shall submit renewal certificates as appropriate during the term of the contract.

**29. Licensing Standards**

The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/ standards, necessary for the performance of this contract.

**30. Nondiscrimination**

During the performance of this Contract, the Contractor shall comply with all federal and applicable state nondiscrimination laws, including but not limited to : Title VII of the Civil Rights Act, 42 U.S.C. §12101 *et seq.* the Americans with Disabilities Act (ADA); and Title 49.60 RCW, Washington Law Against Discrimination. In the event of the Contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy this contract may be rescinded, canceled, or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with the Agency. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

**31. Assurances**

The Agency and Contractor agree that all activity pursuant to this Contract will be in accordance with all the applicable current federal, state and local laws, rules and regulations. These include, but is not limited to, 41 Code of Federal Regulations (CFR) Part 105, Government-wide Debarment and Suspension (Nonprocurement), which provides that an individual, corporation, unit of government or other entity that is debarred or suspended shall be excluded from Federal financial or non-financial assistance and benefits under Federal programs and activities.

**32. Severability**

The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

**33. Waiver**

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by authorized representative of the Agency.

**34. Treatment of Assets**

a. Title to all property furnished by the Agency shall remain in the Agency. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Agency upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the Agency upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the Agency in whole or in part, whichever first occurs.

(b) Any property of the Agency furnished to the Contractor shall, unless otherwise provided herein or approved by the Agency, be used only for the performance of this contract.

- (c) The Contractor shall be responsible for any loss or damage to property of the Agency which results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.
- (d) If any the Agency property is lost, destroyed or damaged, the Contractor shall immediately notify the Agency and shall take all reasonable steps to protect the property from further damage.
- (e) The Contractor shall surrender to the Agency all property of the Agency prior to settlement upon completion, termination or cancellation of this contract.
- (f) All reference to the Contractor under this clause shall also include Contractor's employees, agents or Subcontractors.

### **35. Contractor's Proprietary Information**

Contractor acknowledges that Agency is subject to chapter 42.17 RCW and that this Contract shall be a public record as defined in chapter 42.17 RCW. Any specific information that is claimed by Contractor to be Proprietary Information must be clearly identified as such by the Contractor. To the extent consistent with chapter 42.17 RCW, Agency shall maintain the confidentiality of all such information marked Proprietary Information. If a public disclosure request is made to view Contractor's Proprietary Information, Agency will notify Contractor of the request and of the date that such records will be released to the requester unless Contractor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, Agency will release the requested information on the date specified.

## **DISPUTES AND REMEDIES**

### **36. Disputes**

Except as otherwise provided in this contract, when a bona fide dispute arises between the Agency and the Contractor and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Agent.

1. The request for a dispute hearing must:
  - be in writing;
  - state the disputed issue(s);
  - state the relative positions of the parties;
  - state the Contractor's name, address, and contract number; and
  - be mailed to the Agent and the other party's (respondent's) Contract Manager within 3 working days after the parties agree that they cannot resolve the dispute.
2. The respondent shall send a written answer to the requester's statement to both the agent and the requester within 15 working days.
3. The Agent shall review the written statements and reply in writing to both parties within 10 working days. The Agent may extend this period if necessary by notifying the parties.
4. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Contract shall be construed to limit the parties' choice of a mutually acceptable Alternate Dispute Resolution (ADR) method in addition to the dispute resolution procedure outlined above.

### **37. Attorney's Fees**

In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney's fees and costs.

**38. Non-Exclusive Remedies**

The remedies provided for in this Contract shall not be exclusive but are in addition to all other remedies available under law.

**CONTRACT TERMINATION**

**39. Termination for Cause**

In the event the Agency determines the Contractor has failed to comply with the conditions of this Contract in a timely manner, the Agency has the right to suspend or terminate this Contract. Before suspending or terminating the Contract, the Agency shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within 30 days, the Contract may be terminated or suspended. In the event of termination or suspension, the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original Contract and the replacement or cover Contract and all administrative costs directly related to the replacement Contract, e.g., cost of the competitive bidding, mailing, advertising and staff time. The Agency reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by the Agency to terminate the Contract.

A termination shall be deemed to be a "Termination for Convenience" if it is determined that the Contractor: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence. The rights and remedies of the Agency provided in this Contract are not exclusive and are in addition to any other rights and remedies provided by law.

**40. Termination for Convenience**

Except as otherwise provided in this contract, the Agency may, by 10 days written notice, beginning on the second day after the mailing, terminate this contract, in whole or in part. If this contract is so terminated, the Agency shall be liable only for payment required under the terms of this contract for services rendered or goods delivered prior to the effective date of termination.

**41. Termination Procedures**

Upon termination of this contract the Agency, in addition to any other rights provided in this contract, may require the Contractor to deliver to the Agency any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The Agency shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by the Agency, and the amount agreed upon by the Contractor and the Agency for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services which are accepted by the Agency, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Agent shall determine the extent of the liability of the Agency. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. The Agency may withhold from any amounts due the Contractor such sum as the Agent determines to be necessary to protect the Agency against potential loss or liability.

The rights and remedies of the Agency provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the Agent, the Contractor shall:

- Stop work under the contract on the date, and to the extent specified, in the notice;
- Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract as is not terminated;
- Assign to the Agency, in the manner, at the times, and to the extent directed by the Agent, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Agency has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Agent to the extent Agent may require, which approval or ratification shall be final for all the purposes of this clause;
- Transfer title to the Agency and deliver in the manner, at the times, and to the extent directed by the Agent any property which, if the contract had been completed, would have been required to be furnished to the Agency;
- Complete performance of such part of the work as shall not have been terminated by the Agent; and
- Take such action as may be necessary, or as the Agent may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Agency has or may acquire an interest.

#### **42. Termination for Non-Allocation of Funds**

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to normal completion, the Agency may terminate the contract under the "Termination for Convenience" clause, without the ten day notice requirement, subject to renegotiation under those new funding limitations and conditions.

#### **43. Termination for Conflict of Interest**

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the Agency may, in its sole discretion, by written notice to the Contractor terminate this contract if it is found after due notice and examination by the Agent that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the Contractor in the procurement of, or performance under this contract.

In the event this contract is terminated as provided above, the Agency shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor. The rights and remedies of the Agency

provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the Agent makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

**44. Covenant Against Contingent Fees**

The Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Contractor for the purpose of securing business. The Agency shall have the right, in the event of breach of this clause by the Contractor, to annul this contract without liability or, in the Agency's discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

**45. Section Headings, Incorporated Documents and Order of Precedence**

- a. The headings used herein are inserted for convenience only and shall not control or affect the meaning or construction of any of the sections.
- b. Each of the documents listed below is, by this reference, incorporated into this Contract as though fully set forth herein:
  - i. Agency RFQQ 06-02 dated November 1, 2005
  - ii. Contractor's Response to RFQQ 06-02 dated \_\_\_\_.
  - iii. Certificate of Debarment and Suspension (Exhibit A)
- c. In the event of any inconsistency in this Contract, the inconsistency shall be resolved in the following order of precedence:
  - i. Applicable federal and Washington state statutes, laws, and regulations
  - ii. Sections of this Contract
  - iii. Any other provision, term, or material incorporated by reference or otherwise incorporated

**46. Entire Agreement**

This contract including referenced exhibits represents all the terms and conditions agreed upon by the parties. No other understandings or representations, oral or otherwise, regarding the subject matter of this contract shall be deemed a part hereof.

**47. Amendments**

This Contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

**CONTRACT EXECUTION**

**48. Authority to Bind**

This contract shall be subject to the written approval of the AGENCY'S authorized representative and shall not be binding until so approved. The contract may be altered, amended, or waived only by written amendment executed by both parties.

The signatories to this Contract represent that they have the authority to bind their respective organizations to this Contract.

**APPROVAL**

This Contract, consisting of \_\_\_\_\_ pages and \_\_\_\_ attachments, is executed by the persons signing below who warrant that they have the authority to execute the contract.

Washington State UBI No.: \_\_\_\_\_

Federal Employer ID No./SSN: \_\_\_\_\_

Exhibit A: Certificate of Debarment and Suspension

CONTRACTOR

OFFICE OF THE SECRETARY OF STATE

Authorized Signatory	Date
Title:	

Steve Excell	Date
Assistant Secretary of State	

APPROVED AS TO FORM  
Attorney General's Office